Annual Report

2017/2018

CANADIAN CONSTITUTION FOUNDATION

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Foreword

By all measures, 2017/18 was the most productive year in the sixteen years since the Canadian Constitution Foundation's incorporation. On every front, we built on our past strengths and achieved new benchmarks in case work, communication, profile, and support. All while focussing on our founding goal: "to protect the constitutional freedoms of Canadians through education, communication and litigation."

While the outcome of the Comeau case was disappointing, the overwhelming public, academic, and even political support for the original constitutional vision of a unified Canadian economy has ensured that the cause of internal free trade remains very much alive. In fact, not long after the Comeau decision, Prime Minister Trudeau called for a First Ministers' meeting to discuss reducing internal trade barriers. It is sometimes a challenge to measure the national impact of a single lawsuit – especially a losing one – but in this case I am confident that without the CCF's work bringing the Comeau case to the Supreme Court, the underlying constitutional issue of internal free trade would not be one of the hottest public policy topics on the national agenda.

Meanwhile, our trial fighting for healthcare freedom in B.C. continued, and will continue into 2019. Despite the obstruction of the Crown, we are making gradual but increasing progress establishing the record necessary to win the case at the eventual appellate level. We also continued to defend the property rights of Canadians against abuses of civil asset forfeiture laws, as well as taking on a new high-profile case challenging the Law Society of Ontario's requirement that lawyers and paralegals draft a statement to "demonstrate a personal valuing" of the values of diversity, equality, and inclusion.

On the communications front, we produced a series of short videos promoting our Law Society of Ontario free speech case and our healthcare freedom case, and longer videos of speeches and debates hosted by the Runnymede Society. Our staff appeared on numerous national and regional television and radio shows to discuss our cases and constitutional law issues generally, as well as producing and contributing to more than three hundred op-eds and articles about our cases.

For the second year in a row, we commissioned and published a Constitution Day poll on Canadians' attitudes about constitutional freedoms. We also issued a new original report documenting the barriers to interprovincial free trade in alcohol, and ranking the provinces according to their relative openness.

The Runnymede Society completed a successful second academic year, hosting more than 30 events at more than 15 law schools. The Runnymede Society also launched its first lawyers' chapters with events in Toronto, Calgary, Edmonton, and Vancouver, which will provide an opportunity for our graduating law school chapter members to join with established lawyers in promoting rigorous debate on constitutionalism and the rule of law within the Canadian legal establishment. Our fourth annual Law & Freedom Conference was our best attended yet, with more than 100 participants listening to lively panels featuring leading scholars, judges, and practitioners. Finally, our Primary Documents project continues to expand its scope as a uniquely-valuable resource for anyone interested in Canada's founding documents and debates.

I look forward to continuing to increase the profile and reach of the CCF in the year ahead, building on the extraordinary support we have received from our board, our donors, and from countless members of the public who share our drive to defend the constitutional rights and freedoms of Canadians.

Thank you!

Howard Anglin
Executive Director
Canadian Constitution Foundation

CANADIAN CONSTITUTION FOUNDATION

The Canadian Constitution Foundation (CCF) protects the constitutional freedoms of Canadians through education, communication and litigation.

The CCF is grateful for the help and support given by our donors, volunteers, clients, board and advisory board members, and staff.

Our Priorities:

Individual freedom — the "fundamental freedoms" in section 2 of the *Charter:*

> Freedom of association;
> Freedom of peaceful assembly;
> Freedom of conscience and religion;
> Freedom of thought, belief, opinion and expression.

Economic liberty: the right to earn a living and to own and enjoy property.

Equality before the law: Section 15 of the *Charter of Rights and Freedoms* guarantees equal rights and equal opportunities for all Canadians.

Litigation

In the last year, we defended Canadian freedoms on several key fronts and succeeded in furthering the cause of freedom in Canada's courtrooms and in Canadian public opinion.

Interprovincial Trade

In April 2018, the Supreme Court of Canada held in our *Comeau* case that while there are significant barriers to free trade between provinces within Canada, those barriers are constitutional as long as they do not "in essence and purpose" prevent the flow of out-of-province goods into a province. While we are disappointed in the limited scope of this new test, we are encouraged to still see an outpouring of support from Canadians following the decision. As our Constitution Day 2018 polling shows, an overwhelming majority of Canadians support a far more robust guarantee of interprovincial free trade.

Post-*Comeau*, there are good reasons to remain hopeful about freer interprovincial trade. In another legal action supported by the CCF, an expert panel ruled that the Government of Alberta's Small Brewers Development Program, which discriminates against out-of-province craft beers, does not comply with the province's free trade obligations under Canada's Agreement on Internal Trade. In May 2018, that ruling was confirmed by an appeal panel. The decision could have repercussions across Canada as it impugns any government program designed to provide a competitive advantage through encouraging the production and sale of one province's goods at the expense of another's. The CCF remains committed to the cause of interprovincial trade for the foreseeable future and we will continue to fight to keep Canadian governments accountable to their own trade agreements and to the constitutional promise of internal free trade.

Together with the Montreal Economic Institute and the Atlantic Institute for Market Studies, we also launched the **One Country, One Market** campaign this year in support of interprovincial free trade. This project will sustain and build on the momentum from the *Comeau* case and we will keep the Fathers of Confederation's vision of Canada as a single market alive. Under the One Country, One Market banner, we will be holding a conference on November 1, 2018 bringing together leading policy makers, academics and industry groups to discuss the future of free trade within Canada. We will discuss how best to fulfill this so-far unfulfilled promise of Canada's founding.

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https://www.onecountryonemarket.ca/

Healthcare Freedom

After several months hiatus in our Healthcare Freedom case, counsel was back in court in April 2017 to respond to a long list of challenges by the Crown to evidence we intended to present of wait times and patient suffering in BC. This was a continuation of the Government's frustrating delay tactics from the previous years.

We are not intimidated by the Crown's tactics, which are, to be kind, highly questionable in a *Charter* challenge of this kind. Most public interest litigation trials take a few months, whereas here the Crown will succeed in drawing proceedings out for more than two years. As the Crown obstructs and delays, Canadians are suffering on growing wait lists with no meaningful choices or alternatives. The sooner the Government realizes that it can't stop suffering patients from taking control of their own bodies and their own healthcare, the sooner we will have a system with real patient choice, like every one of our peer countries from Australia to the U.K., from New Zealand to Sweden.

Most recently, in July 2018, counsel in our historic BC healthcare choice case filed an injunction against the BC Government, seeking to stop the enforcement of new financial penalties that the government has threatened to impose on doctors and clinics that treat patients looking for timely treatment options other than languishing on growing wait lists. The CCF continues to raise money and keep donors up-to-date on this case through yourhealthcantwait.ca.

Fighting Compelled Speech

On November 6, 2017, with the support of the CCF, Prof. Ryan Alford of Lakehead University's Bora Laskin Law Faculty filed an application challenging the Law Society of Ontario's new requirement that all lawyers and paralegals draft a personal Statement of Principles demonstrating their "personal valuing" of equality, diversity, and inclusion, and accepting an obligation to promote those values both in their professional work and generally.

We expect most lawyers are sympathetic with the general goals of ensuring equal access to justice and eliminating racial and other forms of invidious discrimination from the legal profession. But whether or not one agrees with these principles, or even the LSO`s specific interpretation of them, this is clearly an unconstitutional imposition of compelled speech that exceeds the Law Society's statutory mandate and violates Sections 2(a) and 2(b) of the *Charter of Rights and Freedoms*.

The LSO is requiring lawyers to go beyond obeying anti-discrimination and other applicable human rights laws. It is forcing them to personally endorse a specific interpretation of a set of principles that have political and philosophical dimensions. It is, in the LSO's own words, requiring licensees "to demonstrate a personal valuing of" its specific interpretation and application of the ideas of "equality, diversity, and inclusion." This crosses the line into forced speech.

Visit the CCF's NoForcedSpeech.ca website to learn more about this case.

Prof Ryan Alford, the applicant in our Law Society of Ontario compelled speech case.

Freedom of Association/Religion

In May 2018, the Supreme Court of Canada decided in *Highwood Congregation of Jehovah's Witnesses v. Wall* that courts do not have the jurisdiction to review the membership and internal disciplinary decisions of private voluntary associations, including religious congregations. The CCF intervened early in favour of civil society organizations right to freedom of association, so this is a victory for both us and those who believe in these essential freedoms.

This decision is important because it shields civil society organizations from second-guessing by the state in the form of judicial review of their internal decisions. The Court held, among other things, that "mere membership in a religious organization … should remain free from court intervention. Indeed, there is no free standing right to procedural fairness with respect to decisions taken by voluntary associations" and "[i]n the end, religious groups are free to determine their own membership and rules; courts will not intervene in such matters save where it is necessary to resolve an underlying legal dispute." We are pleased to see the Court adopt our position on this important issue.

Civil Forfeiture

In September of 2018 we scored a huge victory against civil forfeiture as the Ontario government agreed to compensate Maggie and Terry Reilly for the unjust seizure of their two rental properties. While the province has agreed to return a substantial amount of money to the Reillys, the psychological and emotional toll on the couple has been steep. Nevertheless, the Reillys are relieved and thrilled with the result. Under a court order ending the case against the Reillys, the Ontario government must immediately return the cash from the sale of the properties to the Reillys. It's a bittersweet end to a decade-long legal battle to secure justice for the Reillys, whose case the CCF took up in 2016.

Case Profile:

Margaret and Terry Reilly are an older couple who owned two rooming houses that they rented below the market rate to low-income people. Some of their tenants allegedly sold illegal drugs while renting from the Reillys. Ontario brought an application to forfeit the houses as the proceeds of crime because the Reillys received rent payments from the tenants. There was no allegation that they themselves had *ever* engaged in any illegal activity or condoned their tenants activities. They knew that some of their tenants were not exactly upstanding citizens, but that is why they were trying to give them a helping hand. Margaret and Terry thought they were doing the right thing, and the Government of Ontario unjustly seized their property through civil forfeiture.

Education

Not Admitted Free: our report on interprovincial trade

Published on June 29, 2018 by the Canadian Constitution Foundation, Not Admitted Free takes a critical look at Canada's interprovincial barriers to trade in alcohol.

Comparing and ranking the provinces, the report considers factors such as: price relative to other goods, openness to interprovincial trade, range of products available, whether provincial regulations favour local products, freedom to transport alcohol into the province, public control of sales, and marketing restrictions.

The report also makes the legal and economic case for free trade within Canada for a general audience and summarizes existing studies showing the high cost of interprovincial trade barriers generally, and specifically with alcohol.

The Primary Documents project is the most complete word-searchable electronic repository of documents relating to the Constitution.

In the last year, Primary Documents has become an even more complete, interactive, and practical tool. Our team has added legal citations for every document and grouped documents into natural collections that are based on the McGill Legal Citation guide. Integration has been improved by adding links to related constitutional documents and making improvements to the sorting and searching tools. This includes sorting documents into what section of the Constitution they pertain to so the user can click a section of the Constitution and pull up relevant documents.

RUNNYMEDE SOCIETY

Through on-campus debates and discussion, the Runnymede Society ensures that free speech and intellectual diversity remain an active part of Canadian law school life. We provide outstanding support and opportunities for intellectual enrichment, for networking, and for professional development, which includes providing members an opportunity to meet professors, practitioners, and judges supportive of our mission.

Runnymede Society chapters hosted 20+ events in the last year including:

- September 2017: *"Checks and Balances in Constitutional Interpretation"* Talk with **Justice Marshall Rothstein**, former Supreme Court of Canada judge, University of Alberta.
- October 2017: *"The Presumption of Innocence"*, talk with **Marie Henein**, Henein Hutchison LLP, McGill University.
- January 2018: The Decline of Administrative Law, talk with **Justices Stratas and Nadon**, Federal Court of Appeal, McGill University.
- March 2018: Debate on Net Neutrality with **Ian A. Bell**, internet entrepeneur, and **Jon Festinger**, Q.C., University of British Columbia.
- March 2018: Debate on Judicial Activism with **Prof. Maxime St-Hilaire** and **Julius Grey, Q.C.**, Université de Montréal.
- April 2018: ***"****The Rule of Law in the Age of Trump"* - Lawyers' Chapter event with **David Frum**, Canadian-American political commentator, Toronto.

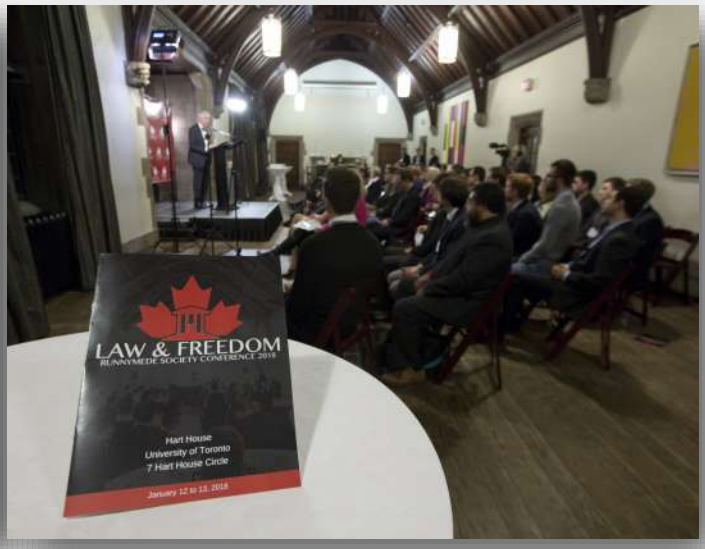
LAW & FREEDOM
RUNNYMEDE SOCIETY CONFERENCE 2018

Beginning in 2018, our annual law conference became a Runnymede Society event, with a more academic focus in line with the Society's mission.

This year our keynote speaker was the **Hon. Peter Lauwers** of the Court of Appeal for Ontario, who spoke on the fuzzy concept of "Charter Values" in constitutional interpretation. The event was loaded with engaging discussions and panels, including a lively debate on the Law Society of Ontario's new mandatory Statement of Principles, featuring **Marni Soupcoff** (writer and former CCF Executive Director), **Bruce Pardy** (Queen's University Faculty of Law), **Adam Goldenberg** (McCarthy Tétrault), and **Renatta Austin** (Renatta Austin Law).

The conference concluded with a special presentation featuring celebrated free speech advocate, **Flemming Rose**, former editor of Danish newspaper Jyllands Posten and publisher of the infamous "2005 Muhammad cartoons".

Recordings of these panels, including the debate, are freely available on the Runnymede Society's YouTube channel.



LAW & FREEDOM

RUNNYMEDE SOCIETY CONFERENCE 2018

Student Leadership Conference

The Runnymede Society hosted its second Student Leadership Conference in Ontario on August 18-20th, 2017.

The weekend featured a mix of socializing, discussion of perennial and topical legal issues, remarks from leading jurists, and hands-on training to launch chapters of the Runnymede Society at law schools across the country in Fall 2017.

This year we hosted:

- **Professor Erin Sheley** (University of Calgary Faculty of Law)
- **Hon. Justice Marc Nadon** (Federal Court of Appeal)
- **Asher Honickman** (Advocates for the Rule of Law)

RUNNYMEDE RADIO

Runnymede Radio is a legal podcast that explores broad questions of law, politics, culture, and education.

Runnymede Radio is available for free streaming or download on iTunes, Stitcher, or wherever you listen to your podcasts.

You may also download and listen via Runnymede Society's website.

Communication

- In 2017/2018, interprovincial trade became one of the most important and popular legal, political, and economic issues in Canada. It is fair to say that this issue rose to prominence almost entirely because of the CCF's *Comeau* and *Artisan Ales* cases.

- Since our last annual report was published in August 2017, interprovincial trade was discussed in over **1,500 articles** online and in print in Canadian and American media, with at least **1,000** of these directly mentioning the *Comeau* case.

- Our healthcare freedom case has received a lot of coverage as well. It was featured in over **600 articles** online and in print by both Canadian and international media. This included considerable coverage in the United States and even by Chinese-language outlets in Canada and China.

- Prof. Ryan Alford's CCF-supported challenge against the Law Society of Ontario's Statement of Principles was featured in more than **136 articles** in print and online. This included many features in industry publications such as Canadian Lawyer and the Law Times. Out case was also endorsed by editorials by the Globe & Mail and National Post.

- More generally, the Canadian Constitution Foundation was directly named in over **500 articles** online and in print. Many of these involved not only CCF projects or cases, but featured comments from CCF staff discussing other constitutional and legal issues the media has brought to us.

- Our growth on Facebook was strong again this year, with a **33%** increase in followers over last year. We expect to finish 2018 with at least 10,000 followers, ahead of all other Canadian civil liberties organizations.

- In 2017/2018, the CCF put a new emphasis on video content. We had nearly **85,000** views of our videos on YouTube, Facebook, and Twitter in the last twelve months. We hope to improve on this solid start by a wide margin in the coming year.

Audited Financials

Revenue	
Contributions and grants	$911,772
Restricted contributions	$3,800,305
Other revenue	$2,760
Interest	$1,583
Total	$4,716,420

Expenses	
Project activities	$3,853,998
Staff salaries	$392,528
Office and administration	$202,013
Travel and fundraising	$13,444
Amortization and realized loss	$6,771
Total	$4,468,754

In addition to the revenues reflected in our audited financial statements, our legal work is made possible by "donations" of time and work from a network of lawyers in private practice who provide their assistance on a pro bono basis or at a substantial discount. We are grateful for their commitment to our cases. In the fiscal year 2017/18, the value of the time donated to our cases from nine law firms was **$1.3 million**.

This donation of time represents a multiplier effect on the amounts donated to our cases of 4.34. That means that for every $100 donated to support our cases in 2017/18, we were able to provide more than $400 of legal work, making our donors' financial contributions go that much farther.

CANADIAN CONSTITUTION FOUNDATION

Contact us

The Canadian Constitution Foundation (CCF) is a registered charity, independent and non-partisan. We defend the constitutional rights and freedoms of Canadians in the courts of law and public opinion.

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Charitable Number: 86617 6654 RR0001
The CCF is also a 501(c)(3) public charity in the U.S.

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